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APR 20 2006

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Michael Steffl et al	:	
Application No. 10/771,659	:	DECISION ON PETITION
Filed: February 4, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2001P15152WOUS	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed international Application No. PCT/EP02/09397, filed August 22, 2002, as set forth in the Application Data Sheet submitted with the petition.

The petition is **DISMISSED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

It is noted that the issue fee in this case was paid on August 3, 2005, which date precedes the date of filing of the instant petition and the amendment.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

- (1) Unpatentability of one or more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
- (2) Consideration of a submission pursuant to 37 CFR 1.114; or
- (3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

See Changes to Application Examination and Provisional Application Practice, Interim Rule, 65 Fed. Reg. 14865, 14873 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47, 54 (Apr. 11, 2000).

Upon payment of the issue fee, an application will not be withdrawn from issue upon petition except for the reasons enumerated in 37 CFR 1.313(c). The circumstances of the above-identified application do not fall within any of those exceptions.

If petitioner herein desires to have the priority data appearing in the Application Data Sheet considered by the Examiner, compliance with the provisions of 37 CFR 1.313(c) must be satisfied. Accordingly, petitioner should consider filing a petition under 37 CFR 1.313(c)(2) and a Request for Continued Examination under 37 CFR 1.114 to have the priority data in the Application Data Sheet of November 22, 2005 considered by the examiner. The petition to withdraw from issue should also be accompanied by a renewed petition under 37 CFR 1.78(a)(3).

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
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By fax:                        (571) 273-8300  
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

  
Frances Hicks

Petitions Examiner  
Office of Petitions